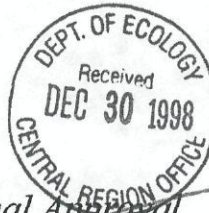


Benton County  
Water Conservancy Board



*Certificate of Conditional Approval  
and Record of Decision*

Date: December 29, 1998

WITHDRAWN  
SEE INFORMATION WEND  
DATED 3/8/99  
FOR INFO ONLY

**Water Board Decision for Conditional Approval:**

The Benton County Water Conservancy Board (BCWCB) provides for conditional approval of the change of water permit place of use as described below and within the attached application form and supporting material. The conditional approval is for change in place of use for Water Permit #G4-30254P. The Permit has a priority date of July 24, 1980. The well covered by the Permit is located approximately 200 feet east and 200 feet south from the center of Section 17, Township 7 North, Range 31 east of the W.M. The well is 252 feet deep.

**Existing Application (Permit, Claim or Certificate) Number and Applicant Identification:**

The applicant filing this request is Mr. Milo Bauder, 120 Meadows Hills Dr., Richland Washington 99352-8464 (telephone (509) 627-2523). The application number is #G4-30254. Permit #G4-30254P is for a well at maximum throughput gallons of 2250 per minute, 508 acre feet per year allocated as follows: 468 acre-feet per year for irrigation of 120 acres from April 1 to October 31; 40 acre-feet per year for frost protection. Applicable fees are paid and the Bauder file from Ecology received.

**Application Change/Transfer Request:**

The purpose of the requested change is to include lands more favorable to irrigation, and more favorable to installation and maintenance of an irrigation system; such that the permitted 120 acres may be developed under standard engineering and farming practices for a more economic and efficient use of water in crop production. A 60 acre portion transfer of water right is requested, said 60 acres having been put to actual beneficial use within the current place of use legal description of Permit #G4-30254P. The lands to which water right acres are requested for transfer are owned by two separate parties who have granted permission for this use: a portion is owned by the Washington State Department of Natural Resources (DNR) and a portion is owned by Kennewick General Hospital (KGH). Thomas Buchholtz for DNR and Thomas Nielsen for KGH have signed in support of the request on the Application for Change of Water Right filed by Mr. Bauder with Ecology on September 30, 1996.

**Change/Transfer Site or Location (Existing and Requested):**

The original permit issued for irrigation and frost protection within the following described lands that are owned by Mr. Bauder: Govt. Lots 3 and 4 of Section 17 containing 59.64 acres, plus or minus; Govt. Lot 1, the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 20 containing 59.85 acres, plus or minus; all in T. 7 N., R. 31 E.W.M., Benton County, State of Washington, said tract of land lying westerly of the westerly right-of-way line of the existing Spokane, Portland, and Seattle Railway Company.

The change application requests a transfer of water right for 60 acres, modifying a part of the place of use by adding the following lands to this description (see attached map to reference parcels location):

*Parcel A:* Approximately 20 acres to be irrigated as referenced on the attached map. Parcel owned by the

Kennewick General Hospital. Legal description: that portion of the Northwest quarter being 400 feet in width and 2400 feet in length lying Southwesterly of the canal and railroad right-of-ways located in Section 17, Township 7 North, Range 31 East of the W.M.

*Parcel B:* Approximately 20 acres to be irrigated as outlined on the attached map. Parcel owned by the State of Washington, Department of Natural Resource Land. Legal description: all within the east half of the Southwest quarter of Section 17, Township 7 North, Range 31 East of the W.M.

*Parcel C:* Approximately 20 acres to be irrigated as referenced on the attached map. Parcel owned by the State of Washington, Department of Natural Resource Land. Legal description: the north 1500 feet and the east 750 feet of the west ½ of the northeast quarter of Section 20, Township 7 North, Range 31 East of the W.M.

A portion of the original permit place of use is requested to be removed from the permit as part of this transfer as follows: that portion of the SE ¼ SE ¼ NE ¼ and the E ½ E ½ SE ¼ of Section 20, Township 7N. Range 31 East of the W.M (see attached map showing property being deleted and new development area).

**Water Right Adjudication Process:**

Water right adjudication does not affect Mr. Bauder's request.

**Public Notification of Applicant Request for Water Right Change/Transfer:**

See attached Affidavit of Publication published in the Tri-City Herald.

**Compliance with State Environmental Policy Act:**

No action required.

**Verification of Existing Right and Water Use:**

The referenced water permit is for 120 acres of which 60 acres have had water perfected and put to beneficial use.

**Field Examination for Existing Use and Site of Change/Transfer:**

Full Ecology file of record was submitted to the Conservancy Board, November 13, 1998. The applicable permit was submitted with the file. In the Application for Change of Water Right, the applicant is asking for change in place of use. The applicant is currently using waters from the permitted well to irrigate and provide frost protection to 60 acres. Water has not been put to beneficial use on the remaining 60 acres due to unforeseen engineering and construction difficulties associated with extending the system within the current place of use. Lands to be irrigated under this transfer appear feasible for irrigation of 60 acres as proposed by Mr. Bauder.

The BCWCB (John A. Jaksch and Darryll Olsen) physically viewed the proposed change in place of use property with Milo Bauder December 12, 1998.

**Technical Information, Investigations, or Reports Requested or Reviewed:** Several reports and other documents of interest have been prepared for this application. The first is a Report of Examination and Findings prepared on behalf of Mr. Bauder by Timothy D. Reiersen, P.E. of Yakima, Washington received by the DOE December 20, 1996 and refilled with the BCWCB on September 1, 1998. The report investigated the requested change to the existing permit and has the following findings.

- There is a water right eligible for change.
- The proposed change will not enlarge the right.
- The proposed change can be made without detriment or injury to existing rights.

The second is a letter from Darlene Frye (DOE, Section Manager, Shorelands and Water Resources Program) to Mr. Bauder extending the project's development completion date to April 1, 1997. A letter in the file from DOE (unsigned except to say it is from the Water Resources Program, Central Regional Office) acknowledges a Notice of Completion of Construction concerning Water Permit #G4-30254P. The letter to Mr. Bauder encloses a Proof of Appropriation Form to be filed when the water has actually been put to full and beneficial use. A copy of the form is not in the file. A conversation with Mr. Timothy Reiersen indicated the Form was received but was not filed given Mr. Bauder's project is still under development.

Third is a letter dated November 13, 1998 from Mr. Bauder to Ecology requesting an extension to Permit #G4-30254P for another two years. A check (#8327) made payable to Ecology for \$10.00 was enclosed with the application. A follow up letter (from Mr. Bauder to Todd Kirk, Water Resources Program, Department of Ecology, Yakima, Washington, dated December 9, 1998) requested a letter from Ecology confirming the status of the Permit. This letter in turn was responded to by Mr. Kevin Brown of DOE confirming receipt of the November 13, 1998 from Mr. Bauder. In order to process the request Ecology asked for additional information, which was supplied to Mr. Brown by Mr. Bauder in a letter dated December 26, 1998. The development schedule recommended herein will set completion due with full beneficial use of the water by April 1, 2003 unless further extended by Ecology.

**Associated Water Rights and Uses Related to Current and Proposed Action(s):**

The applicant has a permit that currently authorizes development of 120 acres, and requires full beneficial use of the water in order for Mr. Bauder to receive a water right certificate for his full existing entitlement. Mr. Bauder has exercised due diligence in developing a water source capable of supplying the full project and has developed 60 acres to date. Further development was postponed when it was found that extension of the water system would require excavation through bedrock, which was hidden under shallow soils. The board is informed that these physical constraints within the existing place of use cause a substantially higher initial cost for extending the water distribution system, but also would cause additional long-term costs for maintenance. Pipeline installations in such difficult conditions are in general more prone to failure and more difficult to repair. Mr. Bauder applied for a water right transfer from Ecology in 1996 in order to modify the place of use so he could continue development of his project in a cost-effective manner. When the process through the BCWCB became available, because his request was still pending with Ecology, Mr. Bauder then re-filed the transfer application with this Board for an expedited review. The applicant desires to transfer 60 water right acres which have been applied to full beneficial use from the original permit place of use to the additional land areas described in the modified place of use. The applicant desires to retain 60 water right acres as permitted within the original place of use, less the portion of place of use being removed, for a total of 120 acres as authorized by permit.

**Review of Potential Impairment:**

The proposed action will not increase the water use from that which has already been authorized under Permit #G4-30254P. There will be no change to the authorized source location and therefore no impairment to existing water rights due to this transfer. A legal notice was published in the Tri-City Herald, Kennewick, Washington approximately November 1996 when Mr. Bauder filed his original Application for Change of Water Right, October 28, 1996. No letters of objection were received regarding the legal notice. A similar legal notice was published (November 1998) in the Herald (see attached Affidavit of Publication) after the BCWCB received Mr. Bauder's request for the change in place of use. No letters of objection were received nor was any correspondence received from anyone with standing in this manner.

**Effect or Detriment to Public Interest:**

The proposed action will not enlarge the existing water right uses allowed under Permit #G4-30254P, or impair other existing water rights or applications for new water rights. In issuing Permit #G4-30254P, Ecology found that the uses as permitted would not be detrimental to the public interest. By allowing the place of use to be modified, Mr. Bauder will be able to continue development of the authorized project in a manner supportive of economically feasible crop production, and consistent with sound principles of water project development including installation of more reliable and therefore more efficient water delivery systems. The proposed action provides for a continuation of the beneficial uses allowed under Permit #G4-30254P and, consequently, increases the benefits to the State by supplying food product and jobs. The proposed action is consistent with the intent of RCW 90.80 and other applicable statutes. It will not be contrary to the interest of the public to enable Mr. Bauder to accomplish these benefits through approval of the subject transfer.

**Consideration of Pending Applications:**

The Report of Examination and Findings by Timothy Reierson, P.E., submitted in support of Mr. Bauder's application for change in place of use, indicates that two other documents have legal descriptions that overlap portions of the proposed place of use. The first is a Surface Water Application #S4-30584 filed by KGH on February 28, 1991. As amended, it requests 49.5 cfs from the Columbia River for irrigation and frost protection of 2,780 acres. Areas of overlap are the North ½ of Section 17 lying southwesterly of canal and railroad right-of-ways and West ½ and Northeast ¼ of Section 20 all in Township 7 North, Range 31 east of the W.M.

Groundwater Application #G4-32199 was filed jointly by Mr. Bauder, DNR and KGH on September 15, 1994. The application requests a combined total of 2,500 gpm together with Permit G4-30254P for the well serving this same water right permit. The application requests irrigation and frost control for an additional 250 acres. The entire area of Permit G4-30254P, including the added lands requested under the subject change application, is overlapped by the request place of use under Application #G4-32199.

Since only one water right at a time can serve as the primary water supply authorization for a given purpose, the final water right developed will need to be distinguished from other water rights which may be subsequently developed. A proof of inspection by the DOE is recommended for this purpose. Potential conflicts may also be addressed in the decision reports for Applications #G4-32199 and #S4-30584, at such time as they are resolved.

At this time these other pending permits are not affected by Mr. Bauder's proposed change in place of use for the requested 60 acres. Also Mr. Bauder's groundwater permit #G4-30254 is senior to the other pending applications.

**Water Board Conclusions Regarding Decision for Conditional Approval:**

1. Sixty acres have been put to beneficial use of the original 120 acres approved for development under Permit #G4-30254.
2. The applicant wishes to transfer 60 water right acres by modifying the permitted place of use to include additional lands suitable for cost effective development. No other changes are permitted to the requirements specified in Permit #G4-30254P except for a development schedule discussed elsewhere in this record of decision.
3. The 60 water right acres are being transferred to lands owned by DNR and KGH, both of which have agreed to Mr. Bauder's request for change in place of use.
4. No one with standing before the Benton County Water Conservancy Board has appeared to protest the requested change.
5. There will be no impairment to existing water rights resulting from the change.
6. Granting this request will allow for bringing about a more economical use of the available water supply.

7. Granting this request is not contrary to the public interest.
8. This project complies with the family farm water act.
9. All applicable fees are paid and the complete Ecology file submitted.

**Limitations Affecting Conditional Approval:**

1. The irrigation project must show due diligence in its development.
2. DOE will conduct a proof inspection before final certificate issuance. The certificate will reflect the extent of the project perfected within the limitations of the change authorized. Aspects of the inspection will include, as appropriate, the as built source location, systems instantaneous capacity, beneficial use, annual quantity, acreage, place of use and satisfaction of the provisions outlined in issuance of the original permit (#G4-30254P (e.g., well constructed to State standards, attachment of a suitable measuring device approved by DOE, etc.).
3. The well covered by Permit #G4-30254P must be metered showing instantaneous and total amount of water pumped. These measurements must be submitted to Ecology if requested to do so. The applicant shall not withdraw more than 2,250 gallons per minute from the permitted well, 468 acre-feet per year for irrigation of 120 acre (total) from April to October 31, and 40 acre-feet per year for frost protection as required. The authorized source is a well located approximately 200 feet east and 200 feet south from the center of Section 17, Township 7 North, Range 31 east of the W.M.
4. The applicant is subject to the rights, privileges and constraints documented in Permit #G4-30254P.
5. Ecology has the right of access to all lands covered by Permit #G4-30254P to the extent

**Mitigation Requirements:**

None required.

**Development Schedule and Beneficial Use:**

The irrigation project must show due diligence with full beneficial use of the water due by April 1, 2003 unless further extended by Ecology. The applicant will notify Ecology upon the project's completion and putting the water to beneficial use on the total permitted 120 acres.

**Change/Transfer Site Location:**

Water right transfer such that irrigation of the balance of permitted acreage up to 120 acres in total for Permit #G4-30254P may be accomplished by changing the place of use as follows: modify the current permit place of use legal description to add the following lands where 60 water right acres are being transferred:

*Parcel A:* Approximately 20 acres to be irrigated as referenced on the attached map. Parcel owned by the Kennewick General Hospital. Legal description: that portion of the Northwest quarter being 400 feet in width and 2400 feet in length lying Southwesterly of the canal and railroad right-of-ways located in Section 17, Township 7 North, Range 31 East of the W.M.

*Parcel B:* Approximately 20 acres to be irrigated as referenced on the attached map. Parcel owned by the State of Washington, Department of Natural Resource Land. Legal description: the east half of the Southwest quarter of Section 17, Township 7 North, Range 31 East of the W.M.

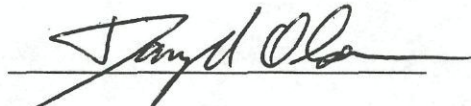
*Parcel C:* Approximately 20 acres to be irrigated as referenced on the attached map. Parcel owned by the State of Washington, Department of Natural Resource Land. Legal description: the north 1500 feet and the east 750 feet of the west ½ of the northeast quarter of Section 20, Township 7 North, Range 31 East of the W.M.

Also, to modify the current permit place of use legal description, removing a portion of the current place of use such that the place of use, in addition to Parcels A, B and C is as follows: Govt. Lots 3 and 4 of Section 17 the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 20 all in T. 7 N., R. 31 E.W.M and all lying westerly of the westerly right-of-way line of the existing Spokane, Portland, and Seattle Railway Company."

**Approval/Rejection:**

The Benton County Water Conservancy Board hereby authorizes (authorizes or rejects) conditional approval for the water right change/transfer described within this record decision on *December 29, 1998* (date) and submits this certificate and record of decision for conditional approval to the Director of the Washington State Department of Ecology for final review or consideration.

Signed:



Darryll Olsen, Ph.D.

Chairman, Benton County Water Conservancy Board

Date: 12/29/98 Approved.



John Jaksch, Ph.D.

Vice-Chairman, Benton County Water Conservancy Board

Date: 12-29-98 Approved



Matt Berg

Treasurer, Benton County Water Conservancy Board

Date: 12-29-98 Approved

**Rejection Opinion**

None.

**Certified Mail to the Director, Washington State Department of Ecology and Central Region Office of WADOE:**

Date Mailed:

12/29/98